

# 74  
11/8/01

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appn. Number: 08/580,493

Appn. Filed: 1995 Dec 29

Applicant: Philippe Berna

Appn. Title: PROCESS FOR MAKING A VERSATILE CLAMPING DEVICE  
DESIGNED TO HOLD OBJECTS WITHOUT DAMAGING THEM, SUCH A  
DEVICE AND ITS USE.

Examiner/GAU: David Bryant/3726

Molières-sur-Cèze, France, 2001, November 8, Thu

PETITION

Enclosed outstanding Filing Receipt Mailed 2001, September 17  
Original Period for Filing a Petition Expires 2001, November 17

Hon. Commissioner for Patents  
Washington, District of Columbia 20231

Sir:

The continuing application to above-mentioned application under 37 C.F.R. 1.62, which has been registered as filed on 08/23/01, has been filed only because the prosecution on this above-mentioned application was closed (the last Office Action was a final action) and because applicant was not aware that 37 C.F.R. 1.62 has been made void. Just the continuation of the examination was sought, in view of a submission of an amendment of the claims. This continuing application has been interpreted by the people in charge at the PTO to check the applications, as a CPA. In fact, as the prosecution was closed and an amendment was submitted with the correct fee, this continuous application should rather have been interpreted as a request for continued examination (RCE). All the requirements set forth in 37 CFR 1.114 were met. Besides it is prescribed in the Internet document entitled "Comparison of CPA Practice, URAA transitional practice under 37 CFR 1.129(a) and new request for continued examination (RCE) practice": 'After August 16, 2000, a RCE must be filed after the prosecution in an application is closed' (boxes #2). Additionally, a CPA may be filed well before the closing of the prosecution and for other purposes than for filing an amendment. For example, a CPA may be filed so that the patent issued from the prosecution could benefit of the patent term adjustment provisions of the AIPA, which a RCE does not allow. Besides when the prosecution is not closed, an amendment of the claims can be submitted within the regular proceeding of an application, notably as a response to the prior action and without the need of paying the basic filing fee. Doubt might be allowed because application is another name for request. There is another reason why selecting RCE

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would have been more appropriate than selecting CPA. A RCE is a solution for the future. A CPA will be soon a solution of the past. CPA practice does not apply to applications filed after May 29, 2000, i.e. will become sooner or later an old solution. A RCE does apply only if the application has been filed after June 8, 1995 and even is prescribed as the only solution after August 16, 2000, once the prosecution in an application is closed. Said above-mentioned application was filed on December 29, 1995, i.e. after June 8, 1995. The RCE practice is due to replace the soon obsolete CPA practice. So it is simplifying the task of the PTO for the future to select today, every time it is possible, what it is already available and which is yet to be tomorrow the dominant solution: RCE.

When applicant received on 10/08/01 the filing receipt of a CPA (see below a copy of it) where was mentioned a projected publication date, he realized, as he never requested the publication of his application, that a CPA was not a Continuation Patent Application but a Continuation Prosecution Application. By referring to what he took one year ago for an invitation paper to request voluntary publication, which he declined by abstention, applicant checked the Internet link <http://www.uspto.gov/web/offices/dcom/olia/aipa/rulechgs.htm> and connected links. He then discovered that dramatic changes had been brought to Title 37 of the Code of Federal Rules. Rule 62 had been made void and replaced in part by a new Rule 53(d), which provides the CPA. And there was now available a new and easier way of getting the examination continued after the issue of a final action, a Request for Continued Examination, in short a RCE. A RCE strictly applies to continuing the examination of same application without divisional extension or change of inventorship. That was just the need for application number 08/580,493 on last 08/16/01 (the date when FedEx delivered at a street address of the PTO), to have its examination continued beyond the last Office Action. A Continuation Prosecution Application covers many more needs.

Accordingly, applicant petitions with deference so that PTO could interpret the continuing application filed under old rule 62, until now registered as filed on 08/23/01, as a Request for Continued Examination (RCE) instead of a CPA and remove his application from the file of projected publications. This choice would be more logical as the prosecution was closed when filing was made (and therefore consistent with what is prescribed: 'After August 16, 2000, a RCE must be filed after the prosecution in an application is closed'). That would be also consistent with the fact applicant never requested a voluntary publication of the application which was filed prior to November

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29, 2000. And that would be not detrimental to the PTO. Indeed the fee then paid and the fee set forth in rule 17(e) for a RCE are of the same amount, i.e. \$355.00 and the number of the application and the date given would not change. This would save even the need for the PTO of advancing the cost for the publication of the application till the time of allowance. Additionally, as for submitting a RCE, the payment of the fee has not been deferred on 08/16/01 as it can be done for a CPA.

Very respectfully submitted,

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CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that this paper of five pages including this one and the two following ones about the copy of the filing receipt is being facsimile transmitted to the Patent and Trademark Office on the date shown below.

Philippe Berna

*Philippe* BERNA

11/8/01

Signature

Date